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DONALD O. NEERINGS
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P O BOX 655474, M/S 3999
DALLAS TX 75265

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OFFICE OF PETITIONS

In re Application of
STEINHOFF et al
Application No. 09/498,677
Filed: February 7, 2000
Attorney Docket No. TI-29599

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition filed November 10, 2005 under 37 CFR 1.137(b), to revive the above-identified application which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to timely respond to the Restriction Requirement mailed March 28, 2002, which set a shortened statutory period for reply of one (1) month or thirty (3) days (whichever is later). Accordingly a reply was due on or before April 28, 2002.

While Petitioner is petitioning under 37 CFR 1.137(b) to revive an application abandoned unintentionally, petitioner is asserting that the abandonment of the application by USPTO is in error and should be withdrawn in view of the evidence submitted in the petition.

Petitioner states that the USPTO never recorded the applicant's second response to the restriction requirement (of March 28, 2002) that was faxed to the USPTO on May 28, 2002 and then resubmitted by fax on October 10, 2002 and December 10, 2004. Copies of which are included in the instant petition along with transmission reports from the sending facsimile machine.

The file record shows that on May 7, 2002 an office communication¹ was sent to applicant indicating that the first response filed on April 24, 2002 to the restriction requirement of March

¹ This communication corresponds to item 5 set forth on page 3 of the instant petition and submitted as Attachment 5. Applicant erroneously labeled the date of the communication as May 25, 2002; the correct date is May 7, 2002. Furthermore, the document submitted as Attachment 5 is not a copy of the correspondence dated May 7, 2002, but the fax coversheet transmittal of the response dated May 28, 2002.

28, 2002 was not deemed a bona fide attempt because there was no election as required by MPEP 714.03, and therefore the period for response continues to run from the date of the restriction requirement (March 28, 2002). It appears that the applicant agreed with that assessment (lacking any evidence to the contrary²) and filed a bona fide second response on May 28, 2002. Since this response was not received by the USPTO by the due date of April 28, 2002³, a one-month extension of time under 37 CFR 1.136(a) was necessary to avoid abandonment of the application.


The evidence submitted satisfies the requirement of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Restriction requirement mailed March 28, 2002 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been transmitted by facsimile on May 28, 2002.

Furthermore, this petition is being treated as a petition for a one (1) month extension of time under 37 CFR 1.136(a) for entry of the response filed on May 28, 2002. An extension of time fee under 37 CFR 1.136(a) of \$110⁴ has been charged to petitioner's deposit account as authorized on the Fee Transmittal form (PTO/SB/17) filed on February 7, 2000 with the Application Transmittal.

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application file is being referred to Technology Center Art Unit 3663 for entry of the response dated May 28, 2002. The extension of time fee has already been charged.


Frances Hicks
Lead Petitions Examiner
Office of Petitions

² Applicant's arguments all pertain to the validity of the restriction requirement(s).

³ The one-month shortened statutory period set from the mail date of March 28, 2002 of the second restriction.

⁴ Fee schedule of October 1, 2001.